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7 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
8 **OF THE STATE OF CALIFORNIA**
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10 In the Matter of the Application of:

11 **S.A., Applicant, on behalf of J.A.**

12 Application No. 643155

Precedent Decision No. 02-01

13 A hearing on this application was held on June 11, 2002, in Red Bluff, California, by
14 Christina M. Aceituno, Hearing Officer, California Victim Compensation and Government Claims
15 Board (Board).

16 The applicant, S.A., attended this hearing and testified under oath.

17 The hearing was closed to the public under Government Code section 13963.1.

18 **Claim History**

19 The application for Victim Compensation Program (program) assistance was received
20 March 26, 2001. This application arose from allegations of neglect and an incident of lewd and
21 lascivious conduct. The applicant requested assistance with mental health expenses. As of this time,
22 no bills have been submitted. The application was recommended for denial on the July 18, 2001,
23 consent agenda and a timely appeal was filed.

24 **Summary of Issues**

25 Program staff recommended denial of this application because staff did not find a
26 preponderance of evidence that J.A. was a victim of a qualifying crime.
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Findings of Fact

According to the application, J.A. (date of birth November 9, 1992) was a victim of neglect and sexual assault by the boyfriend of her biological mother.¹ S.A. is J.A.'s adopted mother. The application noted that the crime occurred on August 3rd and August 5th of 1995 and was reported to the Reno Police Department and the Washoe County Child Protective Services Agency (CPS). S.A. noted on the application that J.A. was placed with CPS in Reno. She also noted that "we have never known exactly what happened." She identified the suspects as J.A.'s biological mother, N.C., and her boyfriend, known only as G.

The August 16, 1995, crime report received in connection with this application, documented allegations of false imprisonment on August 16, 1995. Allegedly, G. held N.C. in his car while the couple argued. During the course of the argument, the suspect, D.F., aka "G.," told N.C. that he had molested N.C.'s two daughters, J.A. and J.A.'s sister. N.C. told officers that the children were having nightmares making N.C. believe they had been molested. No crime report or CPS report was taken regarding the allegations of molestation. N.C. was later arrested on a warrant issued in Lassen County, California, on unrelated charges. In about 1996, J.A. was placed in foster care with S.A.

According to a letter dated June 25, 2001, Carolyn Doty-Johnson, MFCC, stated that J.A. has had recurrent memories of molest by different adults when she was a toddler. J.A. was hospitalized at age 8 (December 2000) during which time she disclosed incidents of molest.²

¹ No other applications have been filed in connection with this crime. However, a previous application (number 438482) was filed by S.A. for J.A. as a result of a corporal injury to a child, Penal Code section 273d, perpetrated by J.A.'s biological father. Medical bills totaling \$7,447.33 and mental health counseling totaling \$8,500 have been paid in connection with this application. Ms. Doty-Johnson provided virtually all the mental health counseling as a result of this prior crime.

² Ms. Doty-Johnson's letter does not specify the nature of the molestation.

1 Ms. Doty-Johnson opined that “children like J.A. who have been exposed to sexual trauma on a
2 consistent basis since infancy develop an unusually high interest in sex not normal for her
3 developmental age.” She continued that J.A. has exhibited behaviors since age four that are
4 “precociously sexual.” This letter was written to help justify treatment on the previous crime of
5 physical abuse. S.A. stated that as J.A. grew older and her sexualized behavior became more
6 problematic, combined with her disclosures during out-patient and in-patient treatment, it became
7 clear that J.A. was also a victim of child molestation perpetrated by a man named G.

8 According to a letter dated June 10, 2002, Ms. Doty-Johnson stated that she has been seeing
9 10-year old J.A. since she was four years old. She stated that she has been treating J.A. for symptoms
10 of physical abuse and neglect by her biological father. Ms. Doty-Johnson also stated that she has
11 begun to address J.A.’s inappropriate sexual behavior and responses at home and at school.

12 S.A. testified that she was granted custody of J.A. as a foster child in about 1995. She stated
13 that she adopted J.A. in about 1997. She testified that she began seeing inappropriate sexual behavior
14 and comments shortly after J.A. came to S.A.’s household. At that time J.A. was about four years old.
15 She stated that the behaviors were so objectionable that J.A. was expelled from her day care center.
16 As an example, S.A. testified that J.A. used a vacuum cleaner hose to imitate penetration on herself
17 and other children.

18 S.A. had previously provided foster care for several children ranging from ages one to
19 twelve. She stated in that capacity, she was required to report child abuse and molest. S.A. also has
20 an educational background in psychology and has worked as an intern under licensed therapists and
21 received training in physical and sexual abuse. S.A. testified that because of her training, her personal
22 history and her intuition, she believed that J.A. demonstrated behaviors that are consistent with a child
23 who has been molested.

24 S.A. testified that over the years, J.A. has talked about memories of the time in Reno and
25 memories of “G.” She has not disclosed specific details of molest or sexual assault; however, she was
26 able to recall being in a motel room with her biological mother and G. J.A. described G. as a “bad
27 person,” that he was mean to her mother and said that she was afraid of him. S.A. stated that J.A. has
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1 been doing badly in school for some time. She exhibits symptoms of fetal alcohol syndrome and has
2 been diagnosed with attention deficit disorder (ADD).

3 4 **Determination of Issues**

5 The Board shall approve an application for assistance if a preponderance of the evidence
6 shows that as a direct result of a crime the victim incurred an injury that resulted in a pecuniary loss.
7 (Gov. Code, § 13964(a).) A crime is a qualifying crime if it results in death, physical injury or threat
8 of physical injury. Injury includes emotional injury if that injury is incurred by a victim who also
9 sustains physical injury or the threat of physical injury. (Gov. Code, § 13960(b)(1); Cal. Code Regs.,
10 tit. 2, § 649(a)(18).)³ The applicant has the burden of proving all issues necessary to establish
11 eligibility by a preponderance of evidence. (Reg. § 647.32.)

12 A victim of specifically enumerated crimes, including Penal Code section 288 [lewd or
13 lascivious acts with a child], who sustained emotional injury is presumed to have sustained physical
14 injury. (Gov. Code, § 13960(b)(1).) It is a violation of Penal Code section 288(a) to willfully and
15 lewdly commit any lewd or lascivious act upon the body of a child under age 14 with the intent of
16 arousing, appealing to, or gratifying the lust, passions or sexual desires of the perpetrator.

17 Several factors must be considered evidence of a child physical or sexual abuse qualifying
18 crime, including: medical or physical evidence consistent with sexual or physical abuse; a report from
19 law enforcement or a child protective services agency concluding that sexual or physical abuse
20 occurred; a credible witness corroborated sexual abuse; and criminal charges of sexual or physical
21 abuse are filed. (Reg. § 654.2(a).)

22 Several factors may be considered evidence of child sexual abuse, including: a mental health
23 evaluation concluding that sexual or physical abuse occurred; the child victim's statement to law
24 enforcement or a child protective services agency; and evidence of behavior consistent to sexual or
25 physical abuse. (Reg. § 654.2(b).)

26 None of the factors that must be considered as evidence of child sexual abuse are present in
27 this case. Two of the factors that may be considered as evidence are present. J.A. has disclosed in
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29 ³ All citations to regulations are to California Code of Regulations, title 2.

1 treatment that "G." molested her but she has not been more specific about exactly how she was touched
2 or assaulted. In addition, as early as age four J.A. has mimicked sexual behavior, including vaginal
3 penetration. Ms. Doty-Johnson concluded that, based on J.A.'s symptoms, behaviors, and disclosures,
4 she was a victim of child molest. In addition, both Ms. Doty-Johnson and S.A. have observed
5 inappropriate sexualized behavior that is consistent with those found in a sexual abuse victim. When
6 weighing the evidence, there is a preponderance of evidence that G. molested J.A. in 1995. There is a
7 preponderance of evidence that J.A. is a victim of a qualifying crime of lewd and lascivious conduct.

8 **Order**

9 The application is eligible. The applicant is eligible for program assistance on behalf of the
10 victim.

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14 Date: July 22, 2002

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16 CHRISTINA M. ACEITUNO
17 Hearing Officer
18 California Victim Compensation and
19 Government Claims Board
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13 Applications No. 643155
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Notice of Decision

15 On September 27, 2002, the California Victim Compensation and Government Claims
16 Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-
17 referenced matter. The Decision became effective on September 27, 2002.
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19 Date: October 2, 2002

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21 CATHERINE CLOSE
22 Chief Counsel
23 California Victim Compensation and
24 Government Claims Board
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